# Local Government Mandate Statement Kentucky Legislative Research Commission 2020 Regular Session

**Part I: Measure Information** 

Bill Request #: 2056
Bill #: HB 481
<b>Document ID #:</b> 4759
<b>Bill Subject/Title:</b> AN ACTrelating to deceptive lawsuit advertising and solicitation practices.
Sponsor: Representative Kimberly Moser
Unit of Government: X City X County X Urban-County Unified Local X Charter County X Consolidated Local X Government
Office(s) Impacted:
Requirement: X Mandatory Optional
Effect on Powers & Duties: Modifies ExistingX Adds New Eliminates Existing
Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

HB 481 creates new section of KRS Chapter 367 regarding deceptive trade practices regarding legal services.

### **Section 1:**

The following activities qualify as deceptive trade practices:

- Failing to disclose the advertisement is a paid advertisement for legal services;
- Presenting an advertisement as a medical alert, health alert, consumer alert, public services announcement, or similar term;
- Displaying the logo of a government agency suggesting affiliation with that agency;
- Describes a product as being "recalled" when a product has not been recalled by a government agency or through an agreement with a manufacturer and government agency:
- Failing to identify the sponsor of the advertisement; or

- Failing to name the attorney or law firm sponsoring the advertisement and whether that attorney or law firm will be performing legal services or will be referring to others to perform those services.

HB 481 requires that an advertisement soliciting clients allegedly injured from a prescription drug approved by the U.S. Food and Drug Administration include the following warning: "Do not stop taking a prescribed medication without first consulting with your doctor. Discontinuing a prescribed medication without your doctor's advice can result in injury or death."

HB 481 requires that an advertisement for a lawsuit soliciting clients allegedly injured from a prescription drug or medical device approved by the U. S. Food and Drug Administration, or from a medical device substantially equivalent to an approved medical device, shall disclose that the drug or device remains approved, unless the product has been recalled or withdrawn.

HB 481 requires that all statements required to appear in an advertisement be presented clearly and conspicuously, and if televised or displayed electronically, shall be displayed to enable the viewer to easily see and fully read the disclosure or disclaimer. Spoken disclosures shall be plainly audible and clearly intelligible.

#### **Section 2:**

A person shall not use, cause to be used, obtain, sell, transfer, or disclose to another person, without written authorization, protected health information as defined in C.F.R. sec.106.103 for the purpose of soliciting legal services.

In addition to other remedies provided by law, a person who knowingly violates the above shall be guilty of a Class A misdemeanor or shall pay a fine of not more than \$1,000, or both.

The above does not apply to protected health information used by an individual's legal representative.

#### The fiscal impact of HB 481 on local governments is expected to be minimal.

A person convicted of a Class A misdemeanor may be incarcerated for up to twelve months. Misdemeanants are housed in one of Kentucky's 77 full service jails or three life safety jails. While the expense of housing inmates varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.34 per day.

In addition to the above, there will be cost associated with disseminating the new violation and educating personnel regarding how to administer it.

## Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II refers to HB 481 as introduced.

Data Source(s): <u>LRC Staff</u>

Preparer: Wendell F. Butler Reviewer: KHC Date: 2/26/20